

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**REBECCA KASSNER**

Claimant

VS.

**SOUTHWESTERN BELL TELEPHONE COMPANY**

Respondent

Self-Insured

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Docket No. 205,231

**ORDER**

On November 14, 1997, the application of respondent for review by the Workers Compensation Appeals Board of an Award entered by Administrative Law Judge Nelsonna Potts Barnes on June 19, 1997, came on for oral argument.

**APPEARANCES**

Claimant appeared by and through her attorney, Andrew E. Busch of Wichita, Kansas. Respondent appeared by and through its attorney, Curtis M. Irby of Wichita, Kansas. There were no other appearances.

**RECORD AND STIPULATIONS**

The record and stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

**ISSUE**

What, if any, is the nature and extent of claimant's injury and/or disability?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the entire evidentiary record, including the stipulations of the parties, the Appeals Board makes the following findings of fact and conclusions of law:

The parties have stipulated that claimant is entitled at minimum to a 20 percent whole body functional impairment. The only question before the Appeals Board regards what if any work disability claimant may be entitled to as a result of the injuries suffered with respondent during the period from September 1994 through June 1995.

The parties have entered into evidence by stipulation the medical records of Dr. Paul D. Lesko, Mr. Jerry Hardin, and Mr. Monty Longacre. The only transcript placed into evidence is the regular hearing of January 22, 1997. The Appeals Board commends the parties on their obvious cooperation in submitting a complete record without the necessity for overly burdensome litigation.

Because claimant's injury is an "unscheduled" injury, claimant is entitled to permanent partial general disability benefits pursuant to K.S.A. 44-510e which provides in pertinent part:

The extent of permanent partial general disability shall be the extent, expressed as a percentage, to which the employee, in the opinion of the physician, has lost the ability to perform the work tasks that the employee performed in any substantial gainful employment during the fifteen-year period preceding the accident, averaged together with the difference between the average weekly wage the worker was earning at the time of the injury and the average weekly wage the worker is earning after the injury. In any event, the extent of permanent partial general disability shall not be less than the percentage of functional impairment.

The only evidence regarding claimant's loss of ability to perform work tasks is that of Dr. Paul D. Lesko. Dr. Lesko was asked to review the task loss opinion of both Mr. Jerry Hardin and Mr. Monty Longacre. In considering the task lists described by both experts, the doctor found that each presented appropriate evidence upon which to base a work disability opinion. Dr. Lesko, in considering Mr. Longacre's opinion, found claimant capable of performing five out of seven tasks having lost the ability to perform two prior tasks. This results in a task loss of 29 percent. Dr. Lesko, in considering Mr. Hardin's opinion, found claimant to have suffered a task loss of 50 percent. The Appeals Board finds no justifiable reason for electing one task loss opinion over the other. As both have been considered "in the opinion of the physician", both shall be considered by the Appeals Board. Therefore, the Appeals Board finds claimant has suffered a task loss of 39.5 percent.

In addition the Appeals Board is obligated to consider the difference between the average weekly wage claimant was earning at the time of the injury and the average weekly wage claimant is earning after the injury. Here claimant, unemployed subsequent to her injury with respondent, has looked for work but has been unable to find a job within her limitations. The Appeals Board finds that claimant has suffered a wage loss of 100 percent. In averaging the task loss of 39.5 percent and the wage loss of 100 percent the Appeals Board finds claimant has suffered a 69.75 percent permanent partial general body disability as a result of the injuries suffered with respondent for the period September 1994 through June 1995. The Appeals Board, therefore, finds that the Award of Administrative Law Judge Nelsonna Potts Barnes dated June 19, 1997, should be modified to grant claimant an award of 69.75 percent permanent partial disability.

For purposes of the award the Administrative Law Judge found the date of accident to be June 30, 1995. This finding was not disputed by the parties and will be adopted by the Appeals Board. Berry v. Boeing Military Airplanes, 20 Kan. App. 2d 220, 885 P.2d 1261 (1994).

The Administrative Law Judge further found that claimant's weekly rate of payment for permanent partial disability benefits was to be reduced, pursuant to K.S.A. 44-501(h), by \$109.50 per week the amount claimant is receiving as retirement benefits from respondent. This finding was also not disputed by the parties and will be adopted by the Appeals Board.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Nelsonna Potts Barnes dated June 19, 1997, should be, and is hereby, modified and claimant is granted an award against the respondent, Southwestern Bell Telephone Company, a qualified self-insured, for an injury suffered during the period September 1994 through June 1995, and based upon an average weekly wage of \$604.50 for a 69.75% permanent partial general disability.

Claimant is entitled to 37.86 weeks temporary total disability compensation at the rate of \$319 per week totaling \$12,077.34, followed by 273.52 weeks permanent partial disability compensation at the rate of \$209.50 per week in the amount of \$57,302.44 for a total award of \$69,379.78.

As of December 10, 1997, there would be due and owing to claimant 37.86 weeks temporary total disability compensation at the rate of \$319 per week in the sum of \$12,077.34, followed by 89.85 weeks permanent partial disability compensation at the rate of \$209.50 in the amount of \$18,823.58 for a total due and owing of \$30,900.92 which is ordered paid in one lump sum minus amounts previously paid. Thereafter claimant is entitled to 183.67 weeks permanent partial disability compensation at the rate of \$209.50 in the amount of \$38,478.87 until fully paid or until further order of the Director.

Claimant is entitled to the unauthorized medical upon presentation of an itemized statement verifying same up to the statutory maximum allowed.

Future medical benefits will be awarded upon proper application to and approval by the Director.

Claimant's attorney fees are approved subject to the provisions of K.S.A. 44-536. The fees necessary to defray the expense of the administration of the Workers Compensation Act are hereby assessed against the respondent to be paid as follows:

Deposition Services	
Transcript of Regular Hearing	\$140.90

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December 1997.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Andrew E. Busch, Wichita, KS  
Curtis M. Irby, Wichita, KS  
Nelsonna Potts Barnes, Administrative Law Judge  
Philip S. Harness, Director